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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/461,900	12/15/1999	ERIC NACE	MCS-116-99	4419
27662	7590	07/13/2005		EXAMINER
LYON & HARR, LLP				THOMSON, WILLIAM D
300 ESPLANADE DRIVE, SUITE 800				
OXNARD, CA 93036			ART UNIT	PAPER NUMBER
			2123	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/461,900	NACE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William D. Thomson	2123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 March 2005.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-40 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. In view of the Supplemental Appeal Brief filed on March 16, 2005, PROSECUTION IS HEREBY REOPENED. Restriction is proper in the instant case and should be resolved prior to Appeal.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. Examiner is reopening prosecution so that all issues are properly addressed, including Election/Restriction.

3. In response to Applicant's election of one of the groups and cancellation of the other group, the subsequent action will be made non-final and the prior final rejection dated March 1<sup>st</sup>, 2004 will be withdrawn to further prosecution on the merits.

4. Applicant's request for interview is acknowledged and will be granted after receipt of the instant Election/Restriction and subsequent non-final Office Action.

Examiner apologizes for the protracted prosecution and is attempting to move prosecution forward without further delay.

***Election/Restrictions***

5. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-33, and 39, drawn to network simulation, classified in class 703 subclass 21.

II. Claims 34-38 and 40, drawn to network management operations, classified in class 709, subclass 224.

6. The inventions are distinct, each from the other because of the following reasons: Inventions I and II are related as combination and sub-combination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the sub-combination as claimed for patentability, and (2) that the sub-combination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the sub-combination as claimed because Group I is directed to network simulation system which is separately usable from Group II directed to recording network characteristics. The sub-combination has separate utility such as Group II can be used for monitoring and tracking information on a network separate from the network simulation system as recited in Group II.

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7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

8. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

9. Examiner does not have to telephone the attorney or agent in cases where the Restriction is deemed complex. This Restriction/Election is deemed complex by the Examiner and that the attorney or agent should be afforded the benefit of receiving the action for careful review and time to formulate a response. See MPEP 812.01

10. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143). Moreover, the non-elected claims are to be cancelled, so that an appropriate rejection or allowance may be provided.

#### **CONTACT INFORMATION**

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William D. Thomson whose telephone number is 571-272-3718. The examiner can normally be reached on 8:30-3:30 Tuesday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 571-272-3749. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William Thomson  
Primary Examiner  
TC 2100  
AU 2123